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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN CARLOS LUIS,

Defendant and Appellant.

F044686

(Super. Ct. No. MF006199A)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. John D. Oglesby, Judge.

Thea Greenhalgh, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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STATEMENT OF THE CASE

On August 25, 2003, an information was filed in the Superior Court of Kern County charging appellant Juan Carlos Luis with count I, unlawful possession of a weapon, a sharp instrument, while confined in a penal institution (Pen. Code, § 4502,

subd. (a)),¹ with an enhancement for having served a prior prison term (§ 667.5, subd. (b)). Appellant pleaded not guilty and denied the enhancement.

On October 14, 2003, appellant's jury trial began. On October 15, 2003, appellant was found guilty of count I, and the court found the enhancement true.

On December 19, 2003, the court imposed the midterm of three years for the substantive offense with a consecutive one-year term for the enhancement for a total of four years, to be served consecutively to the sentence he was already serving in Riverside County Superior Court case No. RIF103272, for a total aggregated fixed term of six years.

On the same day, appellant filed a timely notice of appeal.

FACTS

Appellant was lawfully confined in the California Department of Corrections (CDC) after pleading guilty to auto theft. Appellant was originally housed at Avenal State Prison. He engaged in a fistfight with another inmate and was moved from the general population to Avenal's Administrative Segregation (Ad-Seg) unit. He was also given a term in a Security Housing Unit (SHU) as a penalty for the fight. The SHU is a disciplinary unit for inmates who commit infractions. Avenal did not have a SHU and appellant was transferred to California Correctional Institute at Tehachapi to serve that term. Appellant was in Avenal's Ag-Seg unit for nine or 10 months before he was transferred to Tehachapi's SHU.

On May 1, 2003, appellant arrived at the SHU at Tehachapi and was processed as a new arrival, along with five or six other inmates, pursuant to the unit's standard procedures. Correctional Sergeant John Beckett and Officer Jeffrey Cable supervised the new arrivals. Appellant and the other inmates were subject to unclothed body searches,

¹All further statutory citations are to the Penal Code unless otherwise indicated.

given medical examinations, and issued new clothes. The inmates were then asked to walk through a metal detector. Sergeant Beckett advised appellant and the other new arrivals about the accuracy of the metal detector and “what’s expected of them if it does alert to the presence of metal.” Officer Cable testified Beckett went through “certain rules” but Cable was not sure “exactly what he went through with them.”

Sergeant Beckett instructed appellant to walk through the metal detector. Appellant complied and the alarm went off, indicating the presence of metal. Sergeant Beckett directed appellant to walk through the detector again to make sure it was not a false alarm. Appellant again complied and the alarm again sounded. Sergeant Beckett asked appellant if he had any metal on him. Appellant replied, ““Yes, I have a couple of blades.”” Sergeant Beckett asked appellant to surrender the items and appellant agreed.

Officer Cable escorted appellant to a portable toilet in an adjoining room, and asked him to produce the items. Officer Cable testified that appellant removed a round bindle from his anus. The bindle was wrapped in two CDC forms and covered with cellophane. The bindle was about two inches in diameter and three inches long. Officer Cable opened the bindle and found the head of a standard disposable twin-blade razor, with the plastic cap over the blade. The head was an inch and one-half long, and five-sixteenths of an inch wide. The plastic handle had been broken off from the head of the razor. The twin blades were clearly visible through the plastic head.

Officer Cable escorted appellant through the metal detector again, and the alarm again sounded. Appellant told Officer Cable that he had a lighter. Officer Cable took appellant back to the portable toilet, and appellant removed another bindle from his anus. The bindle was two and one-half inches long and contained a standard, unmodified cigarette lighter. The lighter was wrapped in a piece of latex, which appeared to be the finger piece cut out of a latex glove.

At trial, Sergeant Beckett was extensively questioned by defense counsel as to the SHU’s rules on the possession of sharp objects and lighters. Beckett testified the SHU

inmates are not allowed to have any contact with inmates in the general population. The inmates who are processed into the SHU are not permitted to have any type of razor blade. Beckett testified the head of a disposable razor can be made into a slashing-type weapon. An inmate can “attach the razor blade into rolled plastic, the handle of a melted toothbrush. And they’ll use it to slash each other’s faces, throats -- anywhere they can.”

“Q. Could that – in your training and experience, could that blade be used for any other purposes?

“A. In the SHU Program, no.

“Q. Well, not legitimate purposes. But how about illegitimate purposes, something short of being a weapon?

“A. I have not seen them used for anything else other than that in [the] SHU Program.”

Beckett conceded he had seen razor blades used for other purposes by inmates in the general population, such as to carve hobby crafts, but such activities were not permitted in the SHU.

Sergeant Beckett testified he had never seen inmates use razor blades to make tattoos. It was illegal for inmates to give each other tattoos, but the inmates usually used a sharpened paper clip to carve tattoos. Beckett agreed there was a difference between metal contraband and a weapon. A paper clip might not be considered a weapon, but it was contraband because an inmate in the SHU was not allowed to possess it. A sharpened instrument to make a tattoo would be considered contraband in the general population. Beckett testified it was standard procedure for new arrivals at Tehachapi to walk through the metal detector, but he did not know if it was a standard practice at other state prisons.

Beckett also agreed a lighter was not considered a weapon, but inmates in the SHU are not allowed to possess cigarettes or lighters. Beckett conceded some CDC facilities still permitted smoking but he was not sure if inmates could still possess lighters

in the general population. Beckett did not know about Avenal's policy on cigarettes and lighters. Inmates in some CDC facilities were previously allowed to smoke cigarettes and possess lighters, but smoking was not permitted at Tehachapi.

Also on cross-examination, Beckett was asked whether the new arrivals into the SHU were advised of the applicable policies.

“Q. So you don't know whether or not [appellant] would have been informed as to what rights that he may – may or may not – have if he's transferred to the SHU?

“A. On general knowledge, inmates should have known that a razor blade not still with handle would at least been dangerous contraband on general population yard.

“Q. Okay. But you are saying he should have known? [¶] But do you have any personal knowledge that he was instructed of that?

“A. Review of C-file, he was given a Title 15 which explains all the rules and regulations of Department of Corrections.

“Q. Well, does it explain if – when you go to the SHU that your – the rights that you have in general population are curtailed as to whether or not you can have an item for arts and crafts?

“A. He's explained that he's going to SHU as a disciplinary measure for an infraction of some form that he did on the general population. So he – by assumption alone, he should know that he's going to have additional security measures put upon him.

“Q. But my question, sir, is, for instance, if ... I'm in general population and I get into a fight with someone and I'm told, 'You are going to be transferred to the SHU,' and I'm taken over to the SHU. I am asking you if you have any direct knowledge that [appellant] was told before he was transferred into the SHU, 'You could no longer do this. You could no longer do that. You are restricted from doing this.'

“A. I do not have any direct knowledge if he was told that.”

Officer Cable was also cross-examined on the SHU's rules regarding possession of contraband and a weapon. An inmate in possession of contraband, such as a cell phone or cigarettes, would be subject to a rules-violation hearing. An inmate with a

weapon would be subject to both a rules-violation hearing and an incident report. A paper clip would be considered contraband in the SHU, and it could also be considered a weapon if it was sharpened. The distinction between contraband and a weapon depended on whether the item was sharp.

Officer Cable assumed the twin blades confiscated from appellant were sharp, but he never examined the razor head because “[i]t came out of his anus. I wasn’t going to test it, no.” It was not normal procedure to test the sharpness of shanks or other confiscated items which had been filed to a point. Appellant was not allowed to have a razor blade in the SHU under any circumstances. A SHU inmate received a shower every other day. During the shower, he received a razor to shave, he was required to return the razor before leaving the shower, and he was not allowed to take the razor back to his cell. An inmate in general population could possess a razor but not the SHU inmates. However, a general population inmate who possessed the head of a razor, which was broken off from the handle, would be considered in possession of contraband. It would be considered a weapon if attached to a handle, as if a knife.

“Q. So this [razor head] is simply a weapon because of its location in the prison, in the SHU, rather than it being a weapon through the prison; correct?”

“A. That’s correct.”

Officer Cable testified a newly arrived inmate in the SHU was not asked to sign a document to indicate he had received and read SHU rules.

On redirect examination, Officer Cable clarified the classification of the razor head:

“Q. This is considered a weapon because it’s a sharp item; correct?”

“A. Correct. [¶]...[¶]

“Q. And does this become a weapon because in the SHU it had been – the handle had been broken off?”

“A. Yes. That’s correct.

“Q. But it’s also your testimony, though, that this would also be considered a weapon in the general population because, in fact, the handle had been broken off?

“A. Because it would be considered dangerous contraband, yes, could be used as a weapon.”

Appellant also testified at trial, and admitted he was currently serving a two-year term for auto theft. He previously pleaded guilty to a separate auto theft offense in January 2001. He had never been convicted of a violent crime.

Appellant admitted he was in a fight at Avenal, and transferred from the general population to Avenal’s Ad-Seg unit for nine or 10 months. He was not allowed any contact with inmates in the general population, received a shower three times a week, and only allowed to shave during the showers. A razor was distributed to him during the shower, and he was required to return the razor after the shower.

Appellant testified he kept three razors in his cell at Avenal’s Ad-Seg unit, which were similar to the razor he possessed when he arrived at Tehachapi. He received the razor blades from a correctional officer. Appellant knew the razors were considered contraband in the Ad-Seg unit, and that he was violating the rules by keeping the razors in his cell. Appellant testified he never used the razors as weapons at Avenal, but used them for other reasons because they were sharp. First, he needed an extra shave before he had visitors on Sunday: “We only get razors three times a week. And usually I get a visit on Sundays. And I have Thursday, last day I shave. And I usually shave my head and face.” He also used the razors to sharpen pencils because inmates are not given pencil sharpeners.

Appellant also used the razors to make his bed.

“Well, we get this mattress and two sheets. You can’t just throw the sheets over the mattress and tuck. It’s out in the middle of – it’s just going to all mess up. So we cut little holes on it, like such, and sew it together so it can hold it. And they use the blade to cut the little holes in the sheets.”

Appellant picked up this tip from other inmates. Finally, appellant used the razor blades to “make a zinger.”

“... [Y]ou get two wires, for example, my headphones – wires off headphones. You cut it off. You got negative and positive. You attach the negative to one blade, positive to another one. You put them together with something in between to – for example, piece of plastic. And then you plug it into the water, and put it in your water and heat up your water.”

Appellant and other inmates used this device to “cook your soup. Make some coffee. Heat up water” in their cells.

Appellant testified that in addition to being placed in Avenal’s Ad-Seg unit, he also received a term in a SHU as a penalty for getting into the fight in Avenal. He was transferred to the Tehachapi SHU to serve this term. He only had four months left in his original prison term when he was transferred to Tehachapi.

Appellant testified that when he was transferred from Avenal’s Ag-Seg unit to Tehachapi’s SHU, no one explained any SHU rules, changes in rules between the two units, or any restrictions in SHU which were different from being in the general population. He was not given any written or oral information about SHU rules. Appellant testified no one told him what a SHU was, but conceded that he knew a SHU was “[p]retty much [the] same thing” as being in the Ad-Seg unit.

Appellant admitted he secreted the razor and lighter in his anus when he arrived at Tehachapi because he knew he wasn’t supposed to have them. He broke off the handle from the razor blade “because it would be kind of hard to take it with me without breaking it off.” Appellant knew the items were contraband and he was breaking the rules. The metal detector alarm sounded when he walked through it, and he told the officers that he had a razor blade.

Appellant also admitted he knew the cigarette lighter was contraband in Avenal, but a corrections officer allowed him to keep it in his cell. He also knew he would be violating the rules by bringing in the lighter as contraband into Tehachapi.

Appellant insisted he intended to use the razor in the Tehachapi SHU for the same purposes as he used it in Avenal, and he never intended to use the razor or cigarette lighter as weapons in Tehachapi. Appellant knew that other inmates used razor blades as weapons, and he knew razors could be used as weapons. Appellant insisted, however, he never received any notice of SHU rules as to what he could or could not possess.

“Q. So how do you know you couldn’t have a razor blade?

“A. How do I know?

“Q. Yeah.

“A. Because you get one going into the showers, and you give it back.

“Q. But your testimony is no one ever told you that that was – that you couldn’t have one in your cell?

“A. Well, you get strip searched. You only get certain amount of clothes and toothbrush and whatever. That’s all you get. And you get – put you in the cell, that’s all you get.”

Appellant was convicted of unlawful possession of a weapon, a sharp instrument, while confined in a penal institution in violation of section 4502, subdivision (a), based on his possession of the razor blade, with an enhancement for having served a prior prison term. His conviction was not based on possession of the cigarette lighter. He was sentenced to four years, to be served consecutively to the term he was already serving in prison. On appeal, he contends section 4502, subdivision (a) is unconstitutionally vague as applied to him because he was never informed that he could not possess a razor in the SHU, and that such possession would be treated as a felony rather than a violation of the rules. Appellant relies on the same theory and separately contends there is insufficient evidence to support his conviction because he did not knowingly possess a sharp instrument within the meaning of the statute, and he believed the razor was just contraband.

DISCUSSION

I.

SECTION 4502 IS NOT UNCONSTITUTIONALLY VAGUE

Appellant sets forth a lengthy constitutional challenge to his conviction for violating section 4502. He contends his due process rights were violated because he was never told that possession of a razor in the SHU would constitute a felony offense, whereas possession of the razor in the general population was only a violation of prison rules. Appellant argues section 4502 is unconstitutionally vague, as applied in this case, given the absence of such notice.

Appellant further asserts the lack of guidelines for enforcement of section 4502 resulted in the apparent arbitrary and discriminatory enforcement of the statute as applied to his possession of the razor. Appellant declares section 4502 is inherently ambiguous and fails to provide sufficient notice or definition to give him, “a person of ordinary intelligence, a reasonable opportunity to know that his conduct was criminal when it had not been while he was in the general criminal population and he was never apprised that penalties would change when he was moved” into the SHU.

Appellant notes he possessed three razor blades even when he was in the Ad-Seg unit, the razor was not modified or altered, it was “not capable of being used to inflict injury as a dangerous weapon,” and he testified to his legitimate, nonassaultive uses of the razor. Appellant thus concludes section 4502 is unconstitutionally vague as applied in this case “because it failed to give appellant and similarly situated criminal defendants adequate notice of what would be charged as criminal conduct, and failed to give correctional officers adequate and consistent guidelines for enforcement.”

Section 4502, subdivision (a) provides in pertinent part:

“Every person who, while at or confined in any penal institution ... possesses or carries upon his or her person or has under his or her custody or control any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles, any

explosive substance, or fixed ammunition, any dirk or dagger *or sharp instrument*, any pistol, revolver, or other firearm, or any tear gas or tear gas weapon, is guilty of a felony” (Italics added.)

Section 4502, subdivision (a) is intended to protect inmates and correctional staff from assaults with dangerous weapons by prisoners. (*People v. Custodio* (1999) 73 Cal.App.4th 807, 812 (*Custodio*).) It was “adopted on the justifiable theory that there is greater danger of imprisoned felons becoming incorrigible and resorting to violence if they are permitted to carry upon their persons deadly weapons.” (*People v. Wells* (1945) 68 Cal.App.2d 476, 481.) The statute “applies to instruments that can be used to inflict injury and that are not necessary for an inmate to have in the inmate’s possession.” (*Custodio, supra*, at p. 812.) “The fact that the Legislature has made the possession of *any* weapon, not just firearms, in a penal institution a felony is indicative of the danger weapons present in such a facility.” (*People v. Brown* (2000) 82 Cal.App.4th 736, 739-740.)

Accordingly, section 4502 “absolutely prohibits all prisoners in any state prison, without qualification, from possessing or carrying on their persons certain designated deadly weapons. *The intention with which the weapon is carried on the person is not made an element of the offense.* Proof of the possession of the prohibited weapon infers that it is carried in violation of the statute.” (*People v. Wells, supra*, 68 Cal.App.2d at p. 481, italics added.)

“Although criminal statutes are not often construed to impose sanctions in the absence of *mens rea* or guilty intent, an exception occurs where the statute is an expression of a legislative policy to be served by strict liability. [Citations.] Section 4502 of the Penal Code serves an objective demanding relative inflexibility and relatively strict liability. Its objective is protection of inmates and prison officials against assaults by armed prisoners. [Citations.] It is one of the ‘stringent statutes governing prison safety.’ [Citation.] Its purpose would be frustrated were prisoners allowed to arm themselves in proclaimed or actual fear of anticipated attack by other inmates. Thus a group of California decisions place section 4502 among the statutes whose violation does not depend upon proof of guilty intent, holding that its prohibition is absolute; that it is enough to show the

defendant's knowing possession of the forbidden weapon; that his purpose of arming himself for self-defense against an anticipated assault is no defense.” (*People v. Wells* (1968) 261 Cal.App.2d 468, 478-479, disapproved on other grounds in *People v. Barnum* (2003) 29 Cal.4th 1210, 1219, fn. 1.)

In order to prove a violation of section 4502, subdivision (a), the prosecution must prove the defendant was confined in a state prison and knew the prohibited object was in his or her possession. (*People v. Reynolds* (1988) 205 Cal.App.3d 776, 779, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 490, fn. 12; *People v. Strunk* (1995) 31 Cal.App.4th 265, 272 (*Strunk*).) “Proof of knowing possession of such an instrument by a state prison inmate is sufficient for conviction. The prosecution is not required to prove the intent or purpose for which the instrument is so possessed. [Citations.]” (*People v. Steely* (1968) 266 Cal.App.2d 591, 594; *People v. Reynolds, supra*, at p. 779.)

Appellant relies on a multi-faceted constitutional attack on his convictions. In *Custodio, supra*, 73 Cal.App.4th 807, the court addressed and rejected many of these same constitutional argument. The defendant was convicted of violating section 4502, subdivision (a) because a sharp instrument was found in his cell. It consisted of the plastic barrel of a ballpoint pen with a piece of metal, like a sewing machine needle, sticking out of it. An expert testified the item could be used as a weapon because the metal was extremely stiff, it was affixed to the barrel by melting the plastic pen, and it had a tapered shape so it could be pushed down. Such items were known as “cup picks,” which inmates used to decorate plastic items, but cup picks usually had smaller and softer points whereas the metal tip on this item was firm. The defendant claimed he used the cup pick for artistic reasons, and he did not believe it was a weapon or sharp instrument. (*Custodio*, at pp. 809-810.)

In *Custodio*, the defendant argued section 4502, subdivision (a) violated due process because the term “‘sharp instrument’” was unconstitutionally vague on its face and as applied to his case. (*Custodio, supra*, 73 Cal.App.4th at pp. 810-811.)

“‘Due process requires that criminal statutes be reasonably definite.... In order for a criminal statute to satisfy the dictates of due process in this regard, it must meet two requirements. ‘First, the provision must be definite enough to provide a standard of conduct for those whose activities are proscribed.... Because we assume that individuals are free to choose between lawful and unlawful conduct, ‘we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he [or she] may act accordingly. Vague laws trap the innocent by not providing fair warning.’ ... [¶] Second, the statute must provide definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement....’” [Citation.]” (*Custodio, supra*, 73 Cal.App.4th at p. 811.)

Custodio noted that “[f]acial attacks on section 4502 based upon claims that it is unconstitutionally vague have been rejected over the past 50 years. [Citations.]” (*Ibid.*)

“Defendant’s complaint is that the term ‘sharp instrument’ is unconstitutionally vague on its face because it ‘fails to give adequate guidance to law enforcement as to the standards for enforcement.’ For example, he points out that officers apparently ignore an inmate’s possession of a sharpened pencil even though it is a ‘sharp instrument’ capable of being used as a weapon. Thus, he complains, the absence of a statutory definition for sharp instrument ‘places almost unfettered discretion in the hands of law enforcement,’ ‘permits and encourages an arbitrary and discriminatory enforcement of the law,’ and leaves an inmate to speculate whether a particular sharp object violates the statute. We are unpersuaded.” (*Custodio, supra*, 73 Cal.App.4th at p. 811.)

Custodio reviewed the legislative history and purpose of section 4502—to protect inmates and correctional staff from assaults with dangerous weapons by armed prisoners—and rejected the defendant’s constitutional challenges. (*Custodio, supra*, 73 Cal.App.4th at p. 812.)

“[V]iewing the statute ‘according to the fair import of [its] terms, with a view to effect its objects and to promote justice’ [citation], a person of ordinary intelligence would know what is and what is not prohibited by the

statute. For example, the person would understand that section 4502, subdivision (a) does not apply to a sharpened pencil—which ordinarily is used for a legitimate and necessary purpose—unless the inmate uses the pencil as a weapon. [Citation.] Accordingly, the statute is not unconstitutionally vague on its face.” (*Ibid.*)

Custodio also rejected the defendant’s argument that as applied to his case, the statute was vague and failed to give notice of a criminal offense:

“Nor is the statute vague as applied in this case. Asserting that a ‘cup pick’ is a device made by an inmate for the ordinary purpose of using it to engrave designs on plastic items, such as cups, and suggesting that the ‘cup pick’ found in his possession ‘was no more dangerous than is a pen or pencil,’ defendant argues (1) he was required to speculate whether it was prohibited by section 4502, subdivision (a), and (2) he was prosecuted ‘purely on the whim of a prison guard who chose to deal with this situation as a felony criminal offense rather than simply as an administrative matter, as apparently are the other “cup pick” cases.’ Again, we disagree.

“Evidence established that the sharp instrument seized from defendant’s cell was capable of being used to inflict injury as a stabbing device, and that the instrument was not necessary for defendant to have in his possession. This is not a situation where a device used for artistic purposes was possessed in a prison craft room. In fact, defendant concedes that all ‘cup picks’ found in prison cells are confiscated by the authorities.

“Therefore, defendant reasonably should have known he could not lawfully possess the sharp instrument in his cell. There is no evidence to support his suggestion that the possession of a ‘cup pick’ by an inmate does not ordinarily lead to prosecution pursuant to section 4502, subdivision (a).

“Considering the nature of the item found in defendant’s cell (including its tapered shape and the length and firmness of its sharp metal point) and the fact it is not a necessary possession for an inmate, a person of ordinary intelligence would know it is a sharp instrument which falls within the prohibition of section 4502, subdivision (a).” (*Custodio, supra*, 73 Cal.App.4th at pp. 812-813.)

In the instant case, a similar conclusion can be reached as in *Custodio*. Indeed, appellant’s own testimony establishes that section 4502, subdivision (a) is not unconstitutionally vague as applied to his case. Appellant testified he was moved from Avenal’s general population to the Ag-Seg unit as a disciplinary measure because he

fought with another inmate. Appellant was well aware that he was not allowed to possess a razor for any purpose when he was transferred from Avenal's general population to the Ad-Seg unit. Appellant admitted that he was only allowed to have a razor in the Ad-Seg unit when he had his thrice-weekly shower, he had to return the razor, and it could not be taken back to the cell. Nevertheless, appellant admitted he possessed three razors in his Ad-Seg unit cell and offered a variety of reasons why he used the razors, none of which were connected to assaultive or violent behavior. None of these reasons, however, were legitimate uses because appellant admitted inmates in the Ad-Seg unit were not allowed to possess razors in their cells for any reason.

Appellant also testified that he was transferred from Avenal's Ad-Seg unit to Tehachapi's SHU as a further disciplinary measure for fighting with the other inmate. Appellant repeatedly testified he was never informed of the SHU's rules or restrictions, but admitted that he knew a SHU was "[p]retty much [the] same thing" as being in the Ad-Seg unit. Appellant admitted he broke off the razor's handle and secreted it in his anus because he knew it would be contraband in the SHU, and he knew other inmates used razors as weapons. However, appellant insisted he tried to smuggle the razor into Tehachapi's SHU to continue to have extra shaves and perform other housekeeping tasks as he did in his Ad-Seg unit cell. In addition, appellant's recitation of his intended uses for the razor essentially established the razor was sharp.

While an inmate in general population may possess a razor in his cell for legitimate purposes, appellant admitted he knew such possession was prohibited in the Ad-Seg unit and the SHU. As explained in *Custodio*, appellant reasonably should have known he could not lawfully possess the razor in his SHU cell. The entirety of the record establishes appellant knew that possessing the razor was prohibited, it was a sharp instrument, it could be used as a weapon, and his possession was contrary to the SHU's rules. This prohibited item was clearly identified by section 4502, subdivision (a) as a "sharp instrument." Since appellant knew he possessed the razor, he likewise knew, or is

reasonably charged with knowing, the object's readily apparent physical attributes as a sharp instrument. Indeed, appellant admitted he possessed the razor to use as a sharp instrument. Appellant's alteration of the razor by breaking the handle, and method of smuggling the razor into the SHU, is also indicative of his knowledge and intent.

While appellant claimed to have nonassaultive reasons for his possession of the razor, his subjective intent does not defeat the statute on vagueness grounds. Indeed, the intent of an inmate who possesses a sharp instrument is not an element of section 4502, subdivision (a). Considering the nature and circumstances of his possession, a person of ordinary intelligence would know the razor head was a sharp instrument which fell within the prohibition of section 4502, subdivision (a). We thus reject appellant's constitutional challenges to his conviction.

II.

APPELLANT'S CONVICTION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Appellant contends his conviction for violating section 4502, subdivision (a) must be reversed because there is insufficient evidence he knew he was in possession of a sharp instrument, as defined by the statute. Appellant asserts "the nature of the disposable razor head was not readily apparent as a weapon, nor was any evidence presented that it was sharp. The prosecution thus failed to present sufficient evidence to prove appellant knowing[ly] possessed a sharp instrument that was a weapon."

In determining the sufficiency of the evidence, we review the entire record to determine whether the evidence was reasonable, credible and of solid value from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Catlin* (2001) 26 Cal.4th 81, 139; *People v. Bolin* (1998) 18 Cal.4th 297, 331.) The trier of fact may reasonably rely on the testimony of a single witness, unless the testimony is physically impossible or patently false. (Evid. Code, § 411; *People v. Cudjo* (1993) 6 Cal.4th 585, 608.) We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could

draw from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) Reversal on this ground is unwarranted unless “upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” (*People v. Bolin, supra*, at p. 331.)

As set forth *ante*, in order to establish a violation of section 4502, subdivision (a), the prosecution must prove defendant was confined in a state prison and he knew the prohibited object was in his possession. (*People v. Reynolds, supra*, 205 Cal.App.3d at p. 779; *Strunk, supra*, 31 Cal.App.4th at p. 272.) The prosecution is not required to prove the intent or purpose for which the prohibited instrument was possessed. (*People v. Evans* (1969) 2 Cal.App.3d 877, 881; *People v. Steely, supra*, 266 Cal.App.2d at p. 594.) Nevertheless, there must be evidence of knowing possession of the prohibited object. (*People v. Steely, supra*, at p. 594; *People v. Evans, supra*, at p. 881.) “While the knowledge requirement is consistent with general intent instructions, some specific instruction concerning knowledge of actual or constructive possession must also be given. [Citation.] Such requirement, however, does not make it a specific intent crime.” (*Strunk, supra*, 31 Cal.App.4th at p. 272.) Thus, a defendant may be convicted of the offense only if the jury finds he had knowledge of the prohibited object in his possession. (*Ibid.*; *People v. Elguera* (1992) 8 Cal.App.4th 1214, 1224.)

There is dicta in some cases which suggest the possibility of two extremely narrow defenses to a violation of section 4502: (1) the prisoner’s life was in imminent danger when he armed himself, and he lacked the opportunity to seek the protection of prison authorities, or (2) the instrument was required for performance of prison duties, such as in the kitchen or work shop. (*People v. Wells, supra*, 261 Cal.App.2d at p. 479; *People v. Steely, supra*, 266 Cal.App.2d at p. 595; *People v. Evans, supra*, 2 Cal.App.3d at p. 881.)

Appellant has not relied on either of these defenses to challenge his conviction. Instead, he asserts there is no evidence he knowingly possessed a “sharp instrument” as a weapon within the meaning of section 4502, subdivision (a), because the nature of the disposable razor was not readily apparent as a weapon, and there was no evidence the

razor blade was sharp. There is, obviously, overwhelming evidence that appellant possessed the razor head and knew of the object's presence in his body. The officers testified they observed the twin-edge blade within the razor head when they examined it. Appellant's own testimony established the razor blade was a sharp instrument, based on his lengthy explanation about his past and future intended uses of the razor—to have extra shaves, sharpen pencils, cut holes in his sheets to sew them together, and cut and splice wires to create some type of hot plate in his cell. It can be reasonably inferred that appellant would not have spent the time and effort to secret the bindle in his anus merely to smuggle into the SHU a dull razor, which would have been useless for any of his professed reasons for possession. (See, e.g., *Strunk, supra*, 31 Cal.App.4th at p. 272.) Appellant also admitted that he knew razors could be used as weapons, other inmates used razors as weapons, and he was prohibited from possessing a razor in his cell both in Avenal's Ad-Seg unit and Tehachapi's SHU. The entirety of the record thus establishes substantial evidence that appellant knowingly possessed a sharp instrument and supports his conviction for violating section 4502, subdivision (a).

DISPOSITION

The judgment is affirmed.

HARRIS, Acting P.J.

WE CONCUR:

WISEMAN, J.

GOMES, J.